

AMERICAN BAR ASSOCIATION**SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
CENTER FOR DIVERSITY, EQUITY AND INCLUSION
COMMISSION ON DISABILITY RIGHTS
TORT TRIAL AND INSURANCE PRACTICE SECTION
COMMISSION ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

1 RESOLVED, That the American Bar Association urges Congress to amend Title VII of
2 the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16, the Age Discrimination in
3 Employment Act, 29 U.S.C. § 633a, the Rehabilitation Act of 1973, 29 U.S.C. § 791, and
4 the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff, to require
5 that federal employees and applicants for federal employment be afforded the same
6 timelines for initiating and filing complaints of employment discrimination as are afforded
7 to employees and applicants in the private sector, state government, and local
8 government under 42 U.S.C. § 2000e-5, including by replacing the current 45-day
9 deadline for contacting an Equal Employment Opportunity Counselor with a timeline of
10 not less than 180 days, and by replacing the current 15-day deadline for filing a
11 formal complaint following the conclusion of counseling with a timeline of not less than
12 90 days;

13
14 FURTHER RESOLVED, That the American Bar Association urges the Equal
15 Employment Opportunity Commission to amend its regulations at 29 C.F.R. Part 1614,
16 to the fullest extent permitted by its existing statutory authority, to extend the
17 deadline for federal employees and applicants to initiate contact with an Equal
18 Employment Opportunity Counselor and to file a formal complaint of employment
19 discrimination, so as to reduce the disparity between the timelines applicable to federal
20 sector complainants and those applicable to private sector, state, and local government
21 complainants; and

22
23 FURTHER RESOLVED, That the American Bar Association urges federal, state, local,
24 territorial, and tribal governments, bar associations, and legal services providers to
25 support and promote educational initiatives to ensure that federal employees and
26 applicants for federal employment are fully informed of their rights and the procedural
requirements for filing complaints of employment discrimination, including the applicable
deadlines for each stage of the administrative exhaustion process.

REPORT

I. Introduction and Summary of the Resolution

This Resolution urges Congress to amend federal employment discrimination statutes to harmonize the timelines applicable to federal employees and applicants for federal employment with those applicable to their counterparts in the private sector, state government, and local government. Currently, federal employees who experience workplace discrimination face dramatically shorter deadlines for initiating the administrative complaint process than all other employees. This disparity is neither justified by sound policy nor consistent with the principle that the federal government should be a model employer committed to eliminating discrimination.

Under current law, a private sector, state, or local government employee who believes he or she has been subjected to discrimination has at least 180 calendar days—and, in many jurisdictions, 300 calendar days—to file a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”).¹ By contrast, a federal employee must initiate contact with an agency EEO Counselor within just 45 calendar days of the alleged discriminatory act or the effective date of the challenged personnel action.² After completing counseling, the federal employee then has only 15 days from receipt of the Notice of Right to File to submit a formal complaint of discrimination.³ These compressed timelines create a two-tiered system in which the very employees who serve the public interest receive far less protection against discrimination than those employed by private enterprises.

II. The Disparity in Administrative Exhaustion Timelines

The federal sector EEO complaint process is governed by 29 C.F.R. Part 1614, a body of regulations promulgated by the EEOC. This regulatory framework imposes multiple compressed deadlines on federal employees that have no analogue in the private sector process. The most significant of these disparities are as follows.

First, a federal employee must initiate contact with an EEO Counselor within 45 calendar days of the alleged discriminatory act. This deadline, codified at 29 C.F.R. § 1614.105(a)(1), operates as an absolute prerequisite to filing a formal complaint. A federal employee who misses this deadline—even by a single day—may be forever barred from pursuing administrative relief, subject only to narrow equitable exceptions.⁴ A non-federal employee, by contrast, has at minimum 180 days to file a charge with the EEOC. In states and localities that enforce their own anti-discrimination laws through a fair employment

¹ 42 U.S.C. § 2000e-5(e)(1).

² 29 C.F.R. § 1614.105(a)(1).

³ 29 C.F.R. § 1614.106(b).

⁴ 29 C.F.R. § 1614.105(a)(2) (providing for limited equitable tolling where the complainant was not notified of time limits, did not know of the discriminatory act, or was prevented by circumstances beyond his or her control).

practices agency, the deadline extends to 300 calendar days.⁵ This means that a federal employee's deadline is, at best, one-quarter as long as the deadline available to a private sector employee in the same jurisdiction, and as little as 15 percent of the deadline in jurisdictions with state or local anti-discrimination agencies.

Second, a federal employee has only 15 calendar days to file a formal complaint after receiving the Notice of Right to File. Once a pre-complaint counseling period concludes without resolution, the EEO Counselor conducts a final interview and issues a written notice informing the employee of the right to file a formal complaint.⁶ The employee then has a mere 15 days from receipt of this notice to prepare and submit a formal complaint. There is no analogous secondary deadline of comparable brevity in the private sector process. A private sector employee's initial charge with the EEOC both initiates the administrative process and constitutes the formal complaint; there is no separate, compressed deadline for filing a second document after an intermediate procedural step.

Third, the federal sector process interposes a mandatory pre-complaint counseling stage that further compresses the effective timeline available to the employee. After a federal employee initiates contact with an EEO Counselor, that counselor has thirty days to attempt informal resolution. If the employee elects to participate in alternative dispute resolution, this period extends to 90 days.⁷ While this counseling requirement has the salutary purpose of encouraging informal resolution, its practical effect is to interpose an additional procedural hurdle that does not exist in the private sector and to create additional points at which an unsophisticated complainant may inadvertently forfeit his or her rights.

III. The Disparate Timelines Are Unjustified and Harmful

No sound policy justification exists for imposing shorter complaint deadlines on federal employees than on employees in any other sector. The federal government has repeatedly declared itself to be a model employer with respect to equal employment opportunity, and indeed the federal anti-discrimination statutes pre-date the extension of Title VII to private employers. Yet the procedural framework governing federal sector complaints effectively provides less protection to federal employees than private sector employees enjoy.

The compressed timelines are particularly harmful for several reasons. Employees subjected to discrimination often need time to process what has happened, to determine whether the treatment they experienced was, in fact, unlawful, and to consult with an attorney or a trusted colleague before deciding how to proceed. The 45-day deadline provides precious little time for these necessary steps, especially for employees who may be unfamiliar with the EEO process, who work in remote locations, who have disabilities that affect their ability to navigate bureaucratic procedures, or who reasonably fear

⁵ 42 U.S.C. § 2000e-5(e)(1); *see also Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980) (describing Title VII's filing period as "quite short").

⁶ 29 C.F.R. § 1614.105(d).

⁷ 29 C.F.R. § 1614.105(b)(2), (e).

retaliation for making a complaint. The 15-day deadline for filing a formal complaint after the conclusion of counseling is even more punitive, allowing scarcely more than two weeks for an employee—who may well be unrepresented—to prepare a formal, signed statement describing the discriminatory acts with sufficient precision to withstand agency review.

The Supreme Court itself has acknowledged the brevity of Title VII’s filing period, describing it as “quite short.”⁸ In *Fort Bend County v. Davis*, the Court unanimously held that Title VII’s charge-filing requirement is a mandatory claim-processing rule rather than a jurisdictional prerequisite to suit, reflecting the Court’s recognition that these procedural deadlines should not be treated as absolute bars to the vindication of substantive anti-discrimination rights.⁹ Yet for federal employees, the regulatory deadlines remain far more restrictive than the statutory deadlines that the Court has already deemed “quite short.”

The disparate timelines disproportionately affect the very populations that federal anti-discrimination law is designed to protect. Federal employees who experience discrimination on the basis of race, sex, disability, age, religion, national origin, or genetic information deserve at least the same opportunity to vindicate their rights as their counterparts in the private sector. The current regulatory scheme creates an irrational hierarchy in which the sovereign employer—the one entity that should model compliance with anti-discrimination norms—affords its own workforce the least procedural protection.

IV. Congressional and Regulatory Action Is Necessary

The 45-day counselor contact deadline and the 15-day formal complaint deadline are not required by statute. They are creatures of regulation, established by the EEOC under its rulemaking authority. As such, the EEOC could, in principle, amend 29 C.F.R. Part 1614 to extend these deadlines without new legislation. The second Resolved clause of this Resolution accordingly urges the EEOC to exercise its existing regulatory authority to reduce the timeline disparity to the fullest extent possible.

However, because EEOC regulations can be changed by subsequent administrations and because the most durable protection would come from a statutory amendment, the first Resolved clause urges Congress to codify the principle that federal employees must be afforded filing timelines no less favorable than those available to non-federal employees. Specifically, the Resolution proposes that the initial contact deadline be extended to not less than 180 days—matching the minimum statutory period for filing a charge in the private sector under 42 U.S.C. § 2000e-5(e)(1)—and that the formal complaint deadline be extended to not less than 90 days, providing a reasonable period for the employee to prepare and submit a formal complaint after the conclusion of counseling.¹⁰

⁸ *Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980).

⁹ See *Fort Bend Cnty. v. Davis*, 587 U.S. 541, 541–42 (2019) (holding that Title VII’s charge-filing requirement is a mandatory claim-processing rule, not a jurisdictional prerequisite to suit).

¹⁰ 42 U.S.C. § 2000e-5(b), (e)(1).

Congress has demonstrated its willingness to address deficiencies in the federal sector EEO process. The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (the No FEAR Act) required agencies to be held individually accountable for violations of anti-discrimination laws and to reimburse the Treasury for settlements and judgments.¹¹ More recently, the Elijah E. Cummings Federal Employee Anti-Discrimination Act of 2020 strengthened complaint tracking, accountability, and reporting requirements.¹² Extending administrative exhaustion timelines to achieve parity with the private sector is a natural and logical next step in this ongoing legislative effort to ensure that federal employees receive the full protection of the anti-discrimination laws.

V. The Need for Education and Outreach

The third Resolved clause of the Resolution addresses a complementary but distinct problem: the widespread lack of awareness among federal employees regarding their rights under the EEO process and, critically, the deadlines they must meet to preserve those rights. Many federal employees do not learn of the 45-day deadline until after it has passed. Agencies are required by regulation to post information about how to contact the EEO office, but in practice this information is often not prominently displayed, not distributed at onboarding, and not included in regular training. The No FEAR Act requires agencies to provide anti-discrimination training, but compliance and quality vary widely.¹³

The Resolution accordingly urges all levels of government, bar associations, and legal services providers to support and promote educational initiatives that inform federal employees and applicants of their rights and the procedural steps required to preserve those rights. Even if Congress extends the applicable deadlines, education and outreach will remain essential to ensure that employees understand and can navigate the administrative exhaustion process.

VI. Relationship to Existing ABA Policy

This Resolution is consistent with and builds upon longstanding ABA policy in support of equal employment opportunity and the effective enforcement of anti-discrimination laws. The ABA, through the Section of Civil Rights and Social Justice, has a longstanding history of advocating for strengthened employment discrimination protections for all workers, including federal employees.¹⁴ The ABA has also long advocated for

¹¹ See Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Pub. L. No. 107-174, 116 Stat. 566 (No FEAR Act).

¹² See, e.g., Elijah E. Cummings Federal Employee Anti-Discrimination Act of 2020, Pub. L. No. 116-283, §§ 1131–1137, 134 Stat. 3388, 3902–09 (2020).

¹³ See EEOC, *Questions and Answers: No FEAR Act*, <https://www.eeoc.gov/no-fear/questions-and-answers-no-fear-act> (describing biennial training mandate); EEOC, *FY 2021 Annual Report on the Federal Workforce Part 2: Workforce Statistics and EEO Commitment*, <https://www.eeoc.gov/fy-2021-annual-report-federal-workforce-part-2-workforce-statistics-and-eeo-commitment> (documenting varying rates of agency compliance with EEO program requirements).

¹⁴ See ABA Section of Civil Rights and Social Justice, *Policy*, <https://www.americanbar.org/groups/crsj/resources/policy/> (describing over sixty years of ABA resolutions advancing civil rights and workplace protections),

strengthened employment discrimination remedies and protections, including through its support for equal pay legislation and its comprehensive anti-discrimination policies.¹⁵

This Resolution does not reverse or conflict with any existing ABA policy. Rather, it fills a gap in existing policy by specifically addressing the disparity in administrative exhaustion timelines—a discrete procedural issue that existing resolutions have not directly confronted. Adoption of this Resolution would strengthen the ABA's commitment to equal justice under law and to ensuring that the federal government adheres to at least the same standards of fairness that it imposes on private employers.

VII. Anticipated Objections

Opponents of extending the federal sector deadlines may argue that shorter timelines serve the government's interest in the prompt resolution of disputes, the preservation of evidence, and the efficient administration of the civil service. While these are legitimate governmental interests, they do not justify the magnitude of the current disparity. A 180-day deadline for initiating counselor contact still promotes reasonably prompt action while affording federal employees a meaningful opportunity to assess their situation, consult counsel, and make an informed decision about whether to pursue a complaint. Moreover, the same governmental interests in prompt resolution exist with respect to private sector charges filed with the EEOC, yet Congress has determined that 180 to 300 days is an appropriate balance in that context.

Some may also argue that the mandatory counseling stage provides federal employees with an early resolution mechanism not available to private sector employees, and that this counseling opportunity justifies the shorter initial deadline. However, the existence of an additional procedural step does not justify shortening the time available to initiate that step. If anything, the fact that federal employees must navigate an additional layer of administrative process—one that itself carries tight deadlines and procedural requirements—further supports extending the initial contact deadline to ensure that employees have adequate time to enter and complete the process.

VIII. Conclusion

The current disparity in administrative exhaustion timelines between federal and non-federal employees is an unjustifiable inequity that undermines the enforcement of anti-discrimination law in the federal workplace. Federal employees deserve at least the same procedural protections afforded to every other American worker. This Resolution calls on Congress, the EEOC, and the broader legal community to act to eliminate this disparity and to ensure that all employees have a fair and meaningful opportunity to pursue their claims of workplace discrimination.

¹⁵ See ABA, *Elimination of Discrimination*, https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/discrimination/.

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Respectfully submitted,

Mario A. Sullivan, Chair
Section of Civil Rights and Social Justice

August 2026

GENERAL INFORMATION FORM

Submitting Entity: Section of Civil Rights and Social Justice

Submitted By: Mario A. Sullivan, Chair

1. Summary of the Resolution(s).

This Resolution urges Congress to amend Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16, the Age Discrimination in Employment Act, 29 U.S.C. § 633a, the Rehabilitation Act of 1973, 29 U.S.C. § 791, and the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff, to require that federal employees and applicants for federal employment be afforded the same timelines for initiating and filing complaints of employment discrimination as are afforded to employees and applicants in the private sector, state government, and local government under 42 U.S.C. § 2000e-5. Specifically, the Resolution urges that the current 45-day deadline for contacting an Equal Employment Opportunity Counselor be replaced with a timeline of not less than 180 days, and that the current 15-day deadline for filing a formal complaint following the conclusion of counseling be replaced with a timeline of not less than 90 days. The Resolution further urges the Equal Employment Opportunity Commission to amend its regulations at 29 C.F.R. Part 1614, to the fullest extent permitted by its existing statutory authority, to extend these deadlines administratively. Finally, the Resolution urges federal, state, local, territorial, and tribal governments, bar associations, and legal services providers to support educational initiatives to ensure that federal employees and applicants are fully informed of their rights and the procedural requirements for filing complaints of employment discrimination.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (I-Serve our Members; II-Improve our Profession; III-Eliminate Bias and Enhance Diversity; IV-Advance the Rule of Law) and provide an explanation on how it accomplishes this (Include the Roman number of the goal(s) in the response.)

(II) Improve our Profession: The Resolution promotes uniform and equitable procedural standards for employment discrimination complaints by eliminating a disparity under which federal employees—including the many attorneys employed by the federal government—have dramatically less time to initiate the administrative complaint process than their counterparts in the private sector, state government, and local government. Harmonizing these timelines enables attorneys representing federal employees to operate under procedural rules that are consistent with the rules governing the vast majority of employment discrimination claims nationwide.

(III) Eliminate Bias and Enhance Diversity: The Resolution removes a procedural barrier that disproportionately affects federal employees who experience discrimination on the basis of race, sex, disability, age, religion, national origin, or genetic information. The compressed timelines currently applicable to federal

employees result in the forfeiture of meritorious claims by workers who are unable to navigate the complex administrative exhaustion process within 45 days, particularly employees in remote locations, employees with disabilities, and employees who reasonably fear retaliation. Extending these deadlines will enhance the ability of all federal employees to vindicate their anti-discrimination rights.

(IV) Advance the Rule of Law: The Resolution ensures that the same federal anti-discrimination statutes provide consistent procedural protections to all workers, regardless of whether their employer is a private entity, a state or local government, or the federal government. The principle that the federal government should be a model employer is undermined when the government affords its own employees less time to pursue discrimination claims than private employers are required to afford theirs.

3. Approval by Submitting Entity.

The Section of Civil Rights and Social Justice approved this Resolution on April 6, 2026.

4. Has this or a similar resolution been submitted to the House or Board previously?

No.

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The Association has a longstanding record of advocacy in the area of employment discrimination remedies. Relevant existing policies include the Association's support for the Paycheck Fairness Act and strengthened remedies under the Equal Pay Act (10A107), its adoption of amended Model Rule 8.4 prohibiting harassment and discrimination in conduct related to the practice of law (16A109), and its longstanding advocacy for the elimination of employment discrimination on the basis of race, sex, national origin, religion, disability, age, sexual orientation, and gender identity. This Resolution is consistent with and builds upon the Association's existing commitment to ensuring meaningful access to anti-discrimination remedies for all workers. Adoption of this Resolution would not reverse, supersede, or conflict with any existing Association policy. Rather, it would fill a gap in existing policy by specifically targeting the regulatory timelines imposed on federal employees under 29 C.F.R. Part 1614, which are dramatically shorter than the statutory timelines applicable to all other employees.

6. If this is a late report, what urgency exists which requires action at this meeting of the House?

No.

7. Status of Legislation.

None.

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

If adopted, the Section of Civil Rights and Social Justice will work with the ABA Governmental Affairs Office to transmit the policy to the appropriate congressional committees, the EEOC, and find opportunities to present the policy in congressional testimony, to include the policy in amicus briefs as appropriate, and to coordinate with federal employee unions, civil rights organizations, and other stakeholders in support of legislative and regulatory action consistent with the Resolution.

9. Cost to the Association.

None. Implementation of this policy would involve advocacy efforts within the existing budget and resources of the Section of Civil Rights and Social Justice and the Governmental Affairs Office. No direct expenditure of Association funds would be required.

10. Disclosure of Interest.

None.

11. Referrals.

Business Law Section
 Center for Professional Responsibility
 Coalition on Racial and Ethnic Justice
 Commission on Disability Rights
 Commission on Domestic and Sexual Violence
 Commission on Hispanic Legal Rights & Responsibilities
 Commission on Racial and Ethnic Diversity in the Profession
 Commission on Sexual Orientation and Gender Identity
 Commission on Women in the Profession
 Criminal Justice Section
 Cybersecurity Legal Task Force
 Diversity, Equity, and Inclusion Advisory Council
 Division for Public Education
 Government and Public Lawyers Sector Lawyers Division
 Hispanic National Bar Association
 International Law Section
 Judicial Division
 Law Student Division
 National Asian Pacific American Bar Association
 National Bar Association

National LGBTQ+ Bar Association
National Native American Bar Association
Real Property, Probate and Trust Law Section
Science and Technology Law Section
Section of Administrative Law and Regulatory Practice
Section of Environment, Energy, and Resources
Section of Labor and Employment Law
Section of State, Local and Tribal Government Law
Section of Litigation
Senior Lawyers Division
Solo, Small Firm and General Practice Law Division
Young Lawyers Division

12. Certification of Compliance. All resolutions and reports submitted for consideration by the House of Delegates must be original work, with proper cites and the ability to use the content contained therein. All cites in the resolution and report must be checked by the submitting person or entity for accuracy prior to submission. Finally, if material from another source is cited in a resolution or report, there must be both proper attribution and the legal ability to use the information. Please name the person who verifies that these requirements have been met for the resolution and report submitted.

Jordan D. Howlette

13. Name and Contact Information.
Paula Shapiro, Chief Counsel & Section Director
Section of Civil Rights and Social Justice
860-508-5550
paula.shapiro@americanbar.org

Wendy K. Mariner, CRSJ Section Delegate
616-460-2284
wmariner@bu.edu

Jordan D. Howlette
202-921-6005
jordan@justlyprudent.com

14. Name and Contact Information.

Wendy K. Mariner, CRSJ Section Delegate
616-460-2284
wmariner@bu.edu

Paul R.Q. Wolfson, CRSJ Section Delegate
202-288-7008
prqwolfson@gmail.com

EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution urges Congress to amend Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16, the Age Discrimination in Employment Act, 29 U.S.C. § 633a, the Rehabilitation Act of 1973, 29 U.S.C. § 791, and the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff, to require that federal employees and applicants for federal employment be afforded the same timelines for initiating and filing complaints of employment discrimination as are afforded to employees and applicants in the private sector, state government, and local government under 42 U.S.C. § 2000e-5. Specifically, the Resolution urges that the current 45-day deadline for contacting an Equal Employment Opportunity Counselor be replaced with a timeline of not less than 180 days, and that the current 15-day deadline for filing a formal complaint following the conclusion of counseling be replaced with a timeline of not less than 90 days. The Resolution further urges the Equal Employment Opportunity Commission to amend its regulations at 29 C.F.R. Part 1614, to the fullest extent permitted by its existing statutory authority, to extend these deadlines administratively. Finally, the Resolution urges federal, state, local, territorial, and tribal governments, bar associations, and legal services providers to support educational initiatives to ensure that federal employees and applicants are fully informed of their rights and the procedural requirements for filing complaints of employment discrimination.

2. Summary of the issue that the resolution addresses.

Federal employees who experience workplace discrimination face dramatically shorter deadlines for initiating and completing the administrative complaint process than their counterparts in the private sector, state government, and local government. Under 29 C.F.R. § 1614.105(a)(1), a federal employee must contact an EEO Counselor within 45 calendar days of the alleged discriminatory act—a deadline that is, at best, one-quarter as long as the 180-day minimum available to non-federal employees, and as little as 15 percent of the 300-day deadline available in jurisdictions with state or local fair employment practices agencies. After completing counseling, the federal employee has only 15 days to file a formal complaint, a secondary deadline with no analogue in the private sector process. These compressed timelines are not required by statute; they are creatures of EEOC regulation. They create a two-tiered system in which the very employees who serve the public interest receive less procedural protection against discrimination than those employed by private enterprises, and they result in the forfeiture of meritorious claims by employees who are unable to navigate the complex administrative exhaustion process within these compressed windows.

3. Please explain how the proposed policy position will address the issue.

Extending the initial counselor contact deadline to not less than 180 days would bring the federal sector into parity with the minimum statutory deadline applicable to private sector, state, and local government employees. Extending the formal complaint deadline to not

less than 90 days would provide a reasonable period for a federal employee to prepare and submit a formal complaint after the conclusion of counseling, replacing the current 15-day window that is widely regarded as punitive and inadequate. Urging the EEOC to exercise its existing regulatory authority provides a complementary path that does not depend solely on congressional action. Urging educational initiatives addresses the widespread lack of awareness among federal employees regarding the procedural requirements and deadlines that govern their discrimination claims. Together, these measures would eliminate the procedural disparity that currently disadvantages federal employees and would ensure that all American workers have a meaningful opportunity to pursue their claims of workplace discrimination.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None.